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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,386	12/21/2001	Ronald Michalski	(13426)	6801

7590 12/23/2004

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EXAMINER

CHAN, SING P

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/037,386

Applicant(s)

MICHALSKI ET AL

Examiner

Sing P Chan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-8, 17-21, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-8, 17-21, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 2-8, 17-21, 24, and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 24 and 25, which recite "first means for automatically adjusting the elevational disposition of said tax stamp applicator," and "independently of the positional disposition of said cigarette carton height determination means disposed at said cigarette carton height determination station," however, the specification does not recite an embodiment with cigarette carton height determination means is situated independently from the remaining stations and means.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-5, 7, 17, 20, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, Deceased (U.S. 5,168,883) in view of Teegarden et al (U.S. 5,207,331) and Price (U.S. 4,317,319).

Regarding claims 2, 5, 17, 22, and 23, Winn discloses an apparatus for applying tax stamps to cigarettes in cartons. The apparatus includes a conveyor, a cigarette carton height determination station, a cigarette carton opening station with carton opening means, a tax stamp application station with tax stamp application means, cigarette carton closing station with carton closing means, and means for adjusting the height of the carton opening means and tax stamp application means. (Col 3, line 16 to Col 5, line 6) Wherein the photoelectric cells automatically determine the size or height of the carton, (Col 3, lines 39-42) which are considered to be capable of both detecting the presence of a particular size of carton and determining the height. Winn is silent as to the height determining means is operatively connected to first means or a programmable logic controller for automatic adjusting the elevational disposition of the tax stamp applicator and automatic adjusting the disposition of the closing means. However, providing a programmable logic controller with memory of the height dimension of the cartons is well known and conventional as shown for example by Teegarden et al. Teegarden et al discloses an apparatus for conveying boxes or cartons of various sizes. The apparatus includes providing a programmable logic controller with memory of the height dimension of the cartons, which is programmed to perform the requisite logic functions for producing the controls, fixed sensors arrays connected to the PLC for sensing and determining the height of the container and to

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perform the control function such as adjusting the height of a lift with controls of the hydraulic lift asynchronously, i.e. independent of the disposition of the height determination means. (Col 9, lines 30-36, Col 12, lines 37-60 and Col 19 line 63 to Col 20, line 32)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a programmable logic controller with memory of the height dimension of the cartons connected to sensors arrays and to program the PLC to perform the logic function in response to input from sensors as disclosed by Teegarden et al in the apparatus of Winn to allow an operator to track and control the conveying and application of stamps process easily without the need to an manual adjustment. Winn as modified by Teegarden et al is silent as to automatically adjusting the height of the carton closing means. However, automatic adjusting the height of the carton closing means is well known and conventional as shown for example by Price. Price discloses an apparatus for automatically close box with height sensing. The apparatus includes providing an optical sensors to sense the height of the box, electrically wire the sensor to the logic controller and adjusting the sealing head to the proper height to close and seal the box. (Col 5, line 27 to Col 6, line 26)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide an automatically adjusting means to automatically adjust the height of the closing head as disclosed by Price in the apparatus of Winn as modified by Teegarden to close and seal the cartons of various sizes quickly and continuously without the need to stop and adjust the height manually.

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Regarding claim 3, Winn discloses a carton opening station between the sizing station and the stamping station and a carton closing station downstream of the stamping station. (Col 3, line 53 to Col 4, line 4 and Col 4, lines 55-61)

Regarding claim 4, Winn discloses a pair of beveled pinch roller, i.e. doming wheels, to cause the carton flaps to pop up and a plow knife to open the carton flaps, and at the carton closing station includes a glue trough, i.e. glue pot, and glue wheel for applying glue to the flaps, carton flap closer pushes the flaps downward and closing roller pushes the flaps shut. (Col 3, line 53 to Col 4, line 4 and Col 4, line 55 to Col 5, line 6)

Regarding claims 7 and 20, Winn discloses pads for propelling the cartons through the apparatus (Col 3, lines 24-28 and Figures 1 and 2) to convey cartons of various heights through the apparatus and the various stations are considered to be equally spaced.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, Deceased (U.S. 5,168,883) in view of Teegarden et al (U.S. 5,207,331) and Price (U.S. 4,317,319) as applied to claim 5 above, and further in view of Ferguson (U.S. 5,657,855).

Regarding claim 6, Winn as modified above is silent as to the height adjustment is made with servomotors. However, using motor to adjust the height of the stations is well known and conventional as shown for example by Price. Price discloses drive motor for adjusting the height of the sensing head. (Col 6, lines 50-52)

It would have been obvious to one ordinary skill in the art at the time the invention was made to provide a motor to adjust the height of the applicator as disclosed by Price in the apparatus of Winn as modified by the combination of references to provide a means, which is readily available and easily obtain cheaply to adjust the height of the applicator. Price is silent as the motor is a servomotor. However, using a servomotor to provide the needed stepwise rotation of axle or shaft is well known and conventional as shown for example by Ferguson. Ferguson discloses an apparatus for applying indicia for cigarette packages. The apparatus includes servomotor to provide an accurate and fast positioning with 24,000 steps to move the wheel 45 degree. (Col 3, lines 48-61)

It would have been obvious to one skilled in the art at the time the invention was made to provide servo motor as disclosed by Ferguson in the apparatus of Winn as modified by the combination of references to provide an accurate and fast positioning means for the height adjustment to allow the applicators or stations to be positioned quickly and accurately.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, Deceased (U.S. 5,168,883) in view of Teegarden et al (U.S. 5,207,331) and Price (U.S. 4,317,319) as applied to claim 24 above, and further in view of Baker et al (U.S. 4,101,362).

Winn as modified above discloses a holder for the tax stamp paper with predetermined row and column array of tax stamps is provided and a stamping head for applying the tax stamps to the cigarette package. (Col 4, lines 5-54) Winn is silent as

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to the stamping head includes spaced stamping shoe and the head is linearly longitudinally movable. However, providing spaced stamping shoe on the stamping head and is linearly longitudinally movable are well known and conventional as shown for example by Baker et al. Baker et al discloses an apparatus for applying transfer such as tax stamp to cartons. The apparatus includes a series of platen elements on the platen, i.e. stamp head, to properly transfer the tax stamps to the cigarette packages. (Col 10, lines 35-66) The stamp head also movable in a lateral direction for adjustment to insure proper placement of the tax stamps onto the cigarette packages. (Col 8, lines 42-58)

It would have been obvious to one ordinary skill in the art at the time the invention was made to provide platen elements or shoes on the stamp head and providing lateral adjustment, i.e. linearly longitudinally movement for the stamp head, to allow accurate placement of the stamps onto the cigarette packages as disclosed by Baker et al in the apparatus of Winn to allow the stamp head to be adjusted insure proper placement of the stamps quickly and easily.

7. Claims 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, Deceased (U.S. 5,168,883) in view of Teegarden et al (U.S. 5,207,331) and Price (U.S. 4,317,319) as applied to claim 25 above, and further in view of Baker et al (U.S. 4,101,362).

Winn discloses the opening means for the carton opening station includes two beveled pinch rollers, i.e. doming wheel, a plow knife for inserting under the flaps to opens the flaps, (Col 3, line 55 to Col 4, line 4) the stamp application means includes



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stamping head, i.e. stamping iron, for transferring the stamps to the packs of cigarettes, holder for a roll of tax stamp, which allow the stamps to be advanced so as to present new rows of tax stamps, (Col 4, lines 5-54) and carton closing means includes a glue trough, i.e. a glue pot, glue wheels, flaps closer and roller press the flaps shut. (Col 4, line 55 to Col 5, line 6) Winn does not disclose stamping shoes for engaging the spaced tax stamps. However, providing stamping shoes for engaging spaced tax stamps is well known and conventional as shown for example by Baker et al. Baker et al discloses an apparatus for applying transfer such as tax stamps to cigarette packages. The apparatus includes platen with platen elements, stamping shoes, corresponding to the tax stamps placement on the roll for applying the stamps to the cigarette packages. (Col 10, lines 35-66) The stamp head also movable in a lateral direction for adjustment to insure proper placement of the tax stamps onto the cigarette packages. (Col 8, lines 42-58)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide stamping shoes on the stamping head as disclosed by Baker et al in the apparatus of Winn as modified by the combination of references to provide a simple and easy means for insure proper transfer of stamps to the cigarettes packages.

8. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winn, Deceased (U.S. 5,168,883) in view of Teegarden et al (U.S. 5,207,331) and Price (U.S. 4,317,319) and further in view of Baker et al (U.S. 4,101,362) as applied to claim 18 above, and further in view of Ferguson (U.S. 5,657,855).

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Winn as modified above is silent as to using servomotors to adjust the height of the stations. However, using motor to adjust the height of the assembly or applicator is well known and conventional as shown for example by Price. Price discloses the assembly or sensors head is adjusted using electric motors. (Col 6, lines 50-52)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide drive motors as disclosed by Price in the apparatus of Winn as modified by the combination of references to adjust the height position of the assembly easy with means, which are readily available and easily obtain. Price is silent as to the drive motors are servomotors. However, providing servomotor as the drive motors are well known and conventional as shown for example by Ferguson. Ferguson discloses an apparatus for applying indicia to cigarette packages. The apparatus includes servomotor for various driving system for axle or shaft. (Col 3, lines 48-61)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide servo motors as drive motors as disclosed by Ferguson in the apparatus of Winn as modified by the combination of references to provide the fine adjustment needed for accurately positioning the assembly or station easily and quickly.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 2-8, 17-21, 24, and 25 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sing P Chan whose telephone number is 571-272-1225. The examiner can normally be reached on Monday-Friday 7:30AM-11:00AM and 12:00PM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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